

§ 2-102. Court of Appeals.

(A) Nebraska Supreme Court Rules to Apply. Unless otherwise specified, the Nebraska Court Rules of Appellate Practice shall apply to the Nebraska Court of Appeals.

(B) Petition to Bypass. Any party to a case appealed to the Court of Appeals may file with the Supreme Court a petition to transfer the appeal to the Supreme Court and to bypass review by the Court of Appeals. The petition to bypass shall be filed simultaneously with the initial brief of the party. Such petition shall set forth the basis for the petition, including one or more of the factors set out in Neb. Rev. Stat. § 24-1106(2).

(1) Filing and Service of Petition to Bypass. An original and one copy of the petition to bypass and brief in support thereof, together not to exceed five pages in length, with proof of service, shall be filed with the Supreme Court Clerk. A copy of the petition to bypass and brief shall be served on the opposing party or attorney of record. Service and proof of service shall be in accordance with Neb. Ct. R. Pldg. §§ 6-1105(b) and 6-1106(e).

(2) Objection. Any objection to the petition to bypass shall be due when the brief of the responding party is filed or, when no reply brief is filed, before the expiration of the time prescribed for such filing as provided by § 2-109(A)(3). Such objection and brief in support thereof shall not exceed five pages in length. An original and one copy of the objection and brief, together with proof of service on the opposing party or attorney of record, shall be filed with the Supreme Court Clerk.

(3) Oral Argument. No oral argument is permitted on the petition to bypass except as may be ordered by the Supreme Court; in such event, oral argument shall be limited to 5 minutes per side.

(4) Submission. All petitions to bypass shall be submitted for decision to the Supreme Court on the filing of appellant's reply brief or the expiration of the time prescribed for such filing as provided by § 2-109(A)(3).

(C) Removal of Case From Court of Appeals. At any time during the pendency of a case, upon recommendation of the Court of Appeals or by the Supreme Court's own motion, the Supreme Court may order removal of a case from the Court of Appeals and its transfer to the Supreme Court docket.

(D) Briefs. An original and one copy of each brief to be filed in the Court of Appeals, together with proof of service, shall be filed in the office of the Supreme Court Clerk on or before the date the brief is due, and § 2-109 shall apply to the preparation of such briefs.

(E) Opinions.

(1) Release of Written Opinions. The Court of Appeals will prepare a written opinion in cases where the court believes explanation of its decision is required or that the case is of value as a precedent. Opinions shall be released as ordered by the court.

(2) Copies Mailed. A copy of each opinion shall be mailed, by either U.S. mail or e-mail, to all attorneys and pro se parties whose names and addresses appear on briefs submitted in

connection with the case.

(3) Official Version.

(a) Official opinions of the Court of Appeals approved for publication in a permanent bound volume shall be the final, edited version which appears in bound Volumes 1 through 15 of the Nebraska Appellate Reports.

(b) Official opinions of the Court of Appeals approved for publication shall be the final, edited version which appear as certified on the Nebraska Appellate Courts Online Library for Volume 16 and all volumes thereafter of the Nebraska Appellate Reports.

(c) Official opinions of the Court of Appeals not designated for permanent publication shall be the version which is filed with the Clerk of the Supreme Court.

(4) Opinions of the Court of Appeals which the deciding panel has designated as "For Permanent Publication" may be cited in all courts and tribunals in the State of Nebraska. Other opinions and memorandum opinions of the Court of Appeals may be cited only when such case is related, by identity between the parties or the causes of action, to the case then before the court.

(5) Opinions of the Court of Appeals which the deciding panel has designated as "For Permanent Publication" shall be followed as precedent by the courts and tribunals inferior to the Court of Appeals until such opinion is modified or overruled by the Nebraska Supreme Court.

(6) The panel of the Court of Appeals deciding a case may designate its opinion as "For Permanent Publication" only when one or more of the criteria set in Neb. Rev. Stat. § 24-1104(2) is satisfied.

(F) Petition for Further Review by Supreme Court.

(1) Time and Filing Fee. An original and one copy of a petition for further review and memorandum brief in support must be filed within 30 days after the release of the opinion of the Court of Appeals or the entry of the order of the Court of Appeals finally disposing of the appeal, whichever occurs later. For purposes of this subsection, an order of the Court of Appeals finally disposing of an appeal includes an order on a motion for rehearing or a motion for attorney fees. As of July 1, 2005, pursuant to Neb. Rev. Stat. § 33-103.01, a docket fee of \$50 shall be paid to the Clerk of the Supreme Court at the time of the filing of the petition for further review. Such docket fee shall be required for each appellate case number in which further review is sought, regardless of consolidation of cases for opinion by the Court of Appeals, and by each party filing for further review. This docket fee shall be waived for an indigent person who has been granted leave to proceed in forma pauperis on appeal by the trial court.

(2) Form. The petition for further review and memorandum brief in support shall be typewritten on 8½-by 11-inch paper, shall be double-spaced, and shall use 12-point type. The petition and supporting briefs shall not exceed 10 pages.

(3) Contents. The petition for further review and supporting memorandum brief shall set forth a separate, concise statement of each error alleged to have been made by the Court of Appeals, all of which must be annotated to the record as required by § 2-109. Each

assignment of error shall be separately numbered and paragraphed as required by § 2-109(D)(1)(e). The memorandum brief must discuss the errors assigned.

(4) Response. Parties to the case not filing a petition for further review may respond to the petition within 10 days after the petition for further review and supporting brief are filed. The response and supporting brief shall not exceed 10 pages. If no response will be filed, parties may notify the Clerk of the Supreme Court in writing, and the petition will be submitted immediately.

(5) Filing and Service. Petitions for further review, accompanying briefs in support, and responses thereto shall be filed and served as provided in § 2-109(B)(6). An original and one copy shall be filed in the office of the Supreme Court Clerk.

(6) Submission. Oral argument is not permitted on a petition for further review. All petitions for further review will be submitted 14 days after the petition for further review is filed.

(7) Mandate. No mandate will issue in any case during the time allowed for the filing of a petition for further review or pending the consideration thereof by the Supreme Court. If the petition is sustained, the mandate will not issue during the pendency of the appeal in the Supreme Court as provided for in § 2-114.

(G) Scope of Review. Further review by the Supreme Court is not a matter of right, but of judicial discretion. If the Supreme Court grants review of a Court of Appeals decision, the Supreme Court will review only the errors assigned in the petition for further review and discussed in the supporting memorandum brief. The Supreme Court may limit the issues to one or more of those raised by the parties and may notice plain error at its discretion.

(H) Briefs and Oral Argument on Further Review by Supreme Court. The Supreme Court may order that the parties file supplemental briefs, in accordance with § 2-109, and may order that oral argument be heard. Even without an order from the Supreme Court for briefs, each party may file additional briefs in compliance with § 2-109 when further review by the Supreme Court is ordered. An original and one copy of the petitioning party's brief so prepared, together with proof of service, shall be filed in the Supreme Court Clerk's office within 20 days after the order for further review is entered; all nonpetitioning parties' briefs must be served and filed within 20 days after petitioner has served and filed briefs. For purposes of oral argument on further review, unless otherwise ordered by the Supreme Court on motion or stipulation of the parties or upon the Supreme Court's own motion, the party filing the initial petition for further review shall be entitled to open and close the argument, regardless of whether cross-petitions are filed in the case. Where there are cross-petitions, the petition and cross-petition shall be argued together as one case.

Rule 2, (A), and (C) - (H) amended May 28, 1992; Rule 2(E)(4) amended June 16, 1993; Rule 2(G)(1) amended June 15, 1994; Rule 2(E)(4) amended April 30, 1997; Rule 2(E)(5) and (6) adopted April 30, 1997; Rule 2(F)(4) amended May 29, 1997; Rule 2(G) adopted and Rule 2(H) amended March 24, 1999; Rule 2(F)(1) amended December 15, 1999; Rule 2(F)(3) amended November 15, 2001; Rule 2(H) amended January 24, 2002; Rule 2(F)(1) amended June 15, 2005; Rule 2(F)(1) amended January 19, 2006; Rule 2(F)(2) amended March 22, 2006. Renumbered and codified as § 2-102, effective July 18, 2008. § 2-102(B)(1) amended August 27, 2008; §§ 2-102(B)(1)-(2), (D), (F)(1) and (5), and (H) amended June 6, 2012; §§ 2-102(E)(2) and (E)(3)(a)-(c) amended October 21, 2015.
